

**RULES**  
**for the use of**  
**PLANETOXOPOSITIVE CERTIFICATION TRADEMARKS**  
**of OXOPAK PTY LTD**

1. The Trade Marks are the Trade Marks shown at Schedule 1 of these Rules and are Australian Registered Trade Marks 1852559, 1852560, 1852561, 1852562 and 1852563, known as the PlanetOxoPositive Certification Trade Marks. .
2. The Trade Marks are used to indicate that an Approved Product meets the Guidelines for OxoPak Approval and has been included in the OxoPak Registers maintained by OxoPak because the Approved Products meet higher standards of **Degradability, Biodegradability** or **Eco-Toxicity** than other products within the same product category.
3. The Rules apply to:
  - (a) all Applicants applying to use the Trade Mark after the date of approval of these Rules by the Registrar; and
  - (b) all Licensees whose Licenses are executed by OxoPak after the date of approval of these Rules by the Registrar; and
  - (c) all sub-licensees whose sub-licence agreements to use the Trade Marks are entered into after the date of approval of these Rules by the Registrar.

**4. Definitions**

In these Rules:

- (a) “**Applicant**” means a party to the process of applying to use one or more of the Trade Marks;
- (b) “**Approved Product**” means a product that has been approved for inclusion in the OxoPak Register on the basis of its review by OxoPak;
- (c) “**Business Day**” means a day that is not a Saturday, Sunday or any other day which is a public holiday or a bank holiday in the place where an act is to be performed;
- (d) “**Eligible Organisation**” means an organisation that is eligible to apply to use the Trade Marks under the Oxopak Policy on fees as amended from time to time;
- (e) “**Guidelines for OxoPak Approval**” means the criteria that Proposed Products and Approved Products are required to meet to be and continue to be Approved Products included in the OxoPak Register;
- (f) “**Licence**” means a written agreement with OxoPak licensing the use of one of more Trade Marks in connection with an Approved Product;
- (g) “**Licence Fee**” means the fee payable by the Licensee to OxoPak for the grant of a Licence, calculated in accordance with OxoPak’s Policy on fees as amended from time to time;

- (h) **“Licensee”** means a party who has been authorised by OxoPak under a Licence to use one or more Trade Marks;
- (i) **“OxoPak”** means OxoPak Pty Ltd (ACN: 85 612 024 343) whose business address is 3 Beverley Place, Keysborough, Victoria, Australia;
- (j) **“OxoPak Assessment Scheme (OPAS)”** means the program relating to the assessment of products for their suitability for provision of approval to use the Trade Marks
- (k) **“OxoPak Marketing Guidelines”** means the marketing style guidelines for use of the Trade Marks developed and maintained by OxoPak as amended from time to time;
- (l) **“OxoPak Policy”** means a policy, procedure or guideline developed and maintained by OxoPak as amended from time to time;
- (m) **“OxoPak Register”** means the record of Approved Products maintained by OxoPak
- (n) **“Promotion”** means marketing of an Approved Product in any presentation material, broadcasts, recordings and transmissions, including but not limited to, packaging posters, brochures, environmental professional resources, merchandise, editorials, demonstrations, educational materials, media releases, and print, radio, telephone, television, social media, website, internet application, or email communications;
- (o) **“Proposed Product”** means a product that is submitted to OxoPak for evaluation as to suitability for the inclusion in the OxoPak Register;
- (p) **“Registrar”** means the Registrar of Trade Marks;
- (q) **“Rules”** means the rules herein provided as amended from time to time;
- (r) **“Standards”** means a recognised method of measuring the oxo-biodegradability of plastic by laboratory testing.
- (s) **“Testing”** means chemical analysis of a Proposed or Approved Product undertaken by an analyst to establish if the Product of Oxo-Biodegradable in accordance with one or more of the following Standards:
  - (i) American Standard ASTM D6954-04 – Standard Guide for Plastics that Degrade in the Environment by a Combination of Oxidation and Biodegradation;
  - (ii) British Standard 8472 – Packaging – Method for determining the biodegradability, oxo-biodegradability and phytotoxicity of plastics;
  - (iii) French Accord T51-808 Plastics assessment of oxo-biodegradability of polyolefin materials in the form of films;

- (iv) Swedish Standard SPCR 141 Polymeric waste degradable by abiotic and subsequent biological degradation – requirements and test methods;
  - (v) UAE Standard 5009:2009 Standard & Specification for Oxo-Biodegradation of Plastic bags and other disposable plastic objects;
  - (vi) ISO 17556 Plastics – determination of the ultimate aerobic biodegradability in soil by measuring the oxygen demand in a respirometer or the amount of carbon dioxide involved; and/or
  - (vii) any other Standard determined by OxoPak to be a legitimate Standard of Degradability, Biodegradability and Eco-Toxicity.
- (t) **“Trade Mark”** means each of the certification trade marks described in Rule 1 of these Rules.

**5.** In these Rules where the context permits or requires;

- (a) words in the singular include the plural, words in the plural include the singular; and words importing the masculine gender include the feminine gender or trans-gender.
- (b) where a word or expression is given a particular meaning, other parts of speech and grammatical forms of that word have a corresponding meaning;
- (c) a statute, regulation or provision of a statute or regulation (“Statutory Provision” includes:
  - (i) that Statutory Provision as amended from time to time;
  - (ii) a statute, regulation or provision enacted in replacement of that Statutory Provision; and another regulation or other statutory instrument made or issued under that Statutory Provision.
  - (iii) a reference to an entity, group or association includes that entity’s group’s or associations successors or assignees;
  - (iv) in these Rules “including” and similar expressions are not words of limitation.

**6. Ownership of the Trade Marks**

The Trade Marks are the absolute property of OxoPak and must not be used in Australia by any person except with the authority of OxoPak.

**7. Use of the Trade Marks by OxoPak**

OxoPak may use the Trade Marks for administration, educational, advertising and promotional purposes and to promote the objectives of the OPAS.

## **8. Application and Procedures for Obtaining Permission to Use the Trade Marks**

- (a) An application for a Licence may be made to OxoPak in the manner permitted by OxoPak from time to time.
- (b) The application should include any test results and certifications held by the Applicant in accordance with any applicable Standard.
- (c) If OxoPak requires, the Applicant must submit for Testing samples of the Proposed Product in respect of which the licence is sought.
- (d) The samples submitted by the Applicant must be accompanied by all the information, data, and details required by OxoPak to allow the Testing to take place.
- (e) The laboratory conducting the Testing may require the Applicant to pay a fee for the Testing in which case the fee is to be paid by the Applicant and will not be refunded under any circumstances.
- (f) If OxoPak, either before or after Testing, is satisfied that the Proposed Product meets the Guidelines for OxoPak Approval, OxoPak will notify the Applicant of such and consider any conditions for grant of a Licence.
- (g) If OxoPak is satisfied that one or more of the samples of a Proposed Product do not meet the Guidelines For OxoPak Approval, OxoPak will refuse to grant a Licence to the Applicant in connection with that Proposed Product, and will notify the Applicant of its refusal to grant a Licence.

## **9. Grant of a Licence to Use The Trade Mark**

Oxopak will grant a Licence to Applicants who make an application for such a Licence in accordance with these Rules, provided:

- (a) the Proposed Product of the Applicant meets the Guidelines For OxoPak Approval;
- (b) the Applicant is an Eligible Organisation;
- (c) the Applicant demonstrates that it will comply with the requirements of these Rules, the OxoPak Marketing Guidelines and any other OxoPak Policies which OxoPak deems relevant; and
- (d) OxoPak is satisfied that both the use of the Trade Mark on the Proposed Product and the supply or Promotion of the Proposed Product will not mislead the public or offend the provisions of the Australian Consumer Law.

## **10. Persons who do not have a current Licence are not permitted to use the Trade Marks.**

**11.** A Licence will normally be granted for a period of twelve months but a Licence for another period may be granted when in the opinion of OxoPak, the circumstances are appropriate. In such circumstances the Licence Fee for use of the Trade Mark will be calculated in accordance with OxoPak Policy.

**12. Policies, Procedures and Guidelines**

- (a) OxoPak may make OxoPak Policy not inconsistent with these Rules on all matters relevant to the Trade Marks and Licensees must comply with an OxoPak Policy as at the commencement of the Licence, any changes to an OxoPak Policy required by law and any new or amended OxoPak Policy advised to them by OxoPak during the term of the Licence.
- (b) Upon request from a Licensee, OxoPak may in its absolute discretion grant a Licensee a period of time in which to implement and changes required by a new or amended OxoPak Policy.
- (c) The Licensee must immediately comply with any directions or instructions from OxoPak, in relation to remedying any non-compliance with an OxoPak Policy.

**13. Publicity and the OxoPak Register**

- (a) OxoPak will maintain the OxoPak Register which shall be available for inspection by the public by appointment.
- (b) Applicants shall have the right to publish and advertise the fact of their Product being an Approved Product under OPAS, ensuring that only Approved Products are stated or implied to be Approved Products.

**14. Reputation of the Trade Mark**

OxoPak is concerned to ensure that the reputation and integrity of the Trade Mark is maintained and accordingly;

- (a) Licensees must respect the aims and objectives of OxoPak and must not:
  - (i) act in a manner that is likely to adversely affect the interests of OxoPak in the Trade Marks or may bring the Trade Marks, OPAS or OxoPak into disrepute; or
  - (ii) engage in any passing off, misleading or deceptive conduct in relation to the Trade Marks, OPAS or OxoPak.

**15. Use of the Trade Marks**

- (a) Licensees must comply with the terms and conditions of their License in using the Trade Marks.
- (b) Licensees must submit samples of all Promotions for an Approved Product bearing a Trade Mark to OxoPak for approval prior to use or distribution. Approval will be based on compliance with these Rules, and in particular the OxoPak Marketing Guidelines.

- (c) OxoPak may from time to time review;
    - (i) an Approved Product and any related material;
    - (ii) Promotions and/or manner in which the Trade Mark is being used by the Licensee; and
    - (iii) any other matter or thing connected with compliance with these Rules;
- to ensure that the Licensee continues to comply with the requirements of these Rules.

#### **15. Action Upon a Review**

- (a) In the event that that any one or more of these Rules is found to have been breached, OxoPak will notify the Licensee of the breach and the Licensee must, within such reasonable time as OxoPak directs, either;
  - (i) rectify the breach; or
  - (ii) withdraw the Approved Product from sale and discontinue any Promotions relating to the Approved Product; or
  - (iii) surrender the License granted and cease using the Trade Mark.
- (b) Failure to fulfil the requirements of OxoPak hereunder may result in a License being suspended, revoked or cancelled by OxoPak in its sole discretion.

#### **16. Action by a Licensee on Expiry or Termination of a License**

Upon expiry, revocation, termination, cancellation or surrender of a License, the Licensee;

- (a) will not use the Trade Mark in Promotions; and
- (b) as OxoPak directs, will;
  - (i) destroy; or
  - (ii) deliver up; or
  - (iii) otherwise deal with all promotions bearing the Trade Mark to obscure the Trade Mark.

#### **17. Sub-Licensing**

- (a) OxoPak may in its discretion, permit sublicensing of the Trade Mark where, in the opinion of OxoPak;
  - (i) it is proper to do so;

- (ii) the sublicense will not, or is not likely to be, detrimental to the existence, reputation or standing of OxoPak, the Trade Mark or OPAS; and
  - (iii) the sub-licensee is in accordance with any sub-licensing guideline adopted from time-to-time by OxoPak.
- (b) OxoPak may require a sub-licensee;
  - (i) to provide OxoPak with sample Products for Testing or any test results and certifications held by the sub-licensee in accordance with any applicable Standard; and
  - (ii) demonstrate that it will comply with the requirements of these Rules, the OxoPak Marketing Guidelines and any OxoPak Policies which OxoPak regards as relevant to the sub-licensee; and
  - (iii) to satisfy OxoPak that both the use of the Trade Mark on the sub-licensees Proposed Product and the supply or Promotion of the Proposed Product will not mislead the public or offend the provisions of the Australian Consumer Law

before permitting the Trade Mark to be used by a sub-licensee in relation to an Approved Product.
- (c) A sub-licensee must comply with the Rules as if they were a Licensee and the sub-license was a License

## **18. License Fees and Interest**

- (a) It will be a condition of each License that the Licensee pays to OxoPak the License Fee.
- (b) License Fees may be calculated on any basis set out from time to time in the OxoPak Policy on fees, inclusive but not limited to a Policy that License Fees are non-refundable. .
- (c) Applicant maybe required by OxoPak to provide a statement as to the past, projected or actual gross revenue for each Proposed Product or Approved Product in the manner and form and for the time period required by OxoPak to assist OxoPak in determining the License Fee.
- (d) OxoPak may charge interest on any payments due pursuant to these Rules and the OxoPak Policy on fees that are overdue in accordance with the terms of the License.
- (e) OxoPak shall be entitled to charge as a disbursement (and therefore in addition to the License Fees) any third party costs relating to Testing and may require that the estimated cost of those disbursements be provided to OxoPak by the Applicant prior to the Testing being commissioned.

## **19. Amendment to the Rules**

- (a) Subject to the provisions of the Trade Marks Act 1995 (Cth), OxoPak may vary these Rules at any time and in its absolute discretion, provided that it gives written notice to all Licensees and applicants of any variation to the Rules and the date from which the variation will have effect.
- (b) OxoPak will provide to the Registrar upon request, and will make available to the public by appointment on a confidential basis, copies of the Guidelines For OxoPak Approval and OxoPak Marketing Guidelines and any other OxoPak Policies relevant to the OPAS, including any amendments made to those documents.

## **20. Dispute Resolution**

- (a) Before court or arbitration proceedings other than for urgent interlocutory relief may be commenced, the following steps must be taken to attempt to resolve any dispute that arises out of or in connection with these Rules (including any dispute as to the validity, breach or termination of the Rules, or as to any claim in tort, in equity or pursuant to any statute).
- (b) Notice (the notice of dispute) must be given in writing by the party claiming that a dispute has arisen to the other party (or parties) specifying the nature of the dispute.
- (c) Upon receipt of the notice of dispute, the parties must attempt to agree upon an appropriate procedure for resolving the dispute.
- (d) If within 10 business days of receipt of the notice of dispute the dispute is not resolved or an appropriate alternative dispute resolution process is not agreed, then the parties shall refer the dispute to Resolution Institute (Victoria) for facilitation of a mediation in accordance with Resolution Institute's Mediation Rules.
- (e) The parties must co-operate with Resolution Institute as facilitator.
- (f) If within 10 business days after referral of the dispute to Resolution Institute the parties have not agreed upon the mediator or other relevant particular the mediator and any other relevant particular will be determined in accordance with Resolution Institute's Facilitation Rules.

## **21. Liability and Disclaimer**

- (a) OxoPak will not be liable for any legal action taken by any party against the Applicant arising from the use of the Trade Marks.
- (b) The Applicant is responsible for ensuring that the Approved Product meets the requirements of all applicable regulations that are not subject of the OPAS, including, without limitation relevant quality, safety, health and environmental standards not covered by Standards.



# SCHEDULE 1



TM 1852562



TM1852559



TM 1852562



TM 1852563



TM 1852561